TRANS-TEXAS ENERGY, INC.

IBLA 81-187 Decided July 28, 1981

Appeal from decision of the Utah State Office, Bureau of Land Management, canceling oil and gas lease U-46185.

Affirmed.

1. Oil and Gas Leases: Cancellation -- Oil and Gas Leases: First Qualified Applicant -- Oil and Gas Leases: Noncompetitive Leases

A noncompetitive oil and gas lease may only be issued to the first qualified applicant. Where an oil and gas lease has issued to a corporate applicant whose offer lacked priority because of noncompliance with 43 CFR 3102.2-5, requiring the filing of a list of corporate officials, such lease is properly canceled where another offer was filed for the same lands before the applicant cured the defect in its own offer.

APPEARANCES: Thomas J. Nance, Esq., and Jo Anna Goddard, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Trans-Texas, Inc. (Trans-Texas), appeals from a decision dated November 10, 1980, by the Utah State Office, Bureau of Land Management (BLM), which canceled its oil and gas lease U-46185.

By Secretarial Order No. 3051 of April 7, 1980, the suspension against filing oil and gas lease offers imposed by Secretarial Order No. 3049 was lifted, effective June 16, 1980. A simultaneous filing period for over-the-counter lease offers was established from start of business June 16 until close of business June 23, 1980. During the simultaneous filing period appellant filed several offers over-the-counter, including U-46185, for public lands in Utah. Lease U-46185

was issued to appellant effective November 1, 1980, for 640 acres of land in Millard County, Utah, described as follows: "T. 16 S., R. 11 W., SLM Utah Sec. 27, all."

The decision appealed from canceled the lease stating as follows:

> It has come to the attention of this office that the corporate qualifications for Trans-Texas, Inc. were not complete until August 22, 1980, at which time an intervening offer had been filed. The conflicting offer was complete as of the time of filing. 43 CFR 3102.2-1(c); 43 CFR 3111.1-1(d). Oil and gas lease U-46185 is hereby cancelled. [Emphasis in original.]

With respect to corporate qualifications for oil and gas leasing of Federal lands, 43 CFR 3102.2-5(a)(3) (45 FR 35162 (May 23, 1980)), effective June 16, 1980, provides:

> (a) A corporation which seeks to lease shall submit with its offer, or application if leasing is in accordance with Subpart 3112 of this title, a statement showing:
>
> * * * * * * *
>
> (3) A complete list of corporate officers, identifying those authorized to act on behalf of the corporation in matters relating to Federal oil and gas leasing.

Citing this regulation, BLM, by letter dated July 10, 1980, advised Trans-Texas that it was required to submit a complete list of corporate officers, identifying those empowered to act on behalf of the corporation in matters relating to Federal oil and gas leasing, before its offer to lease would be complete and ripe for consideration by BLM.

Before appellant submitted the required information an intervening offer had been filed and completed.

On appeal appellant asserts that it "commenced its compliance with [BLM's] request on July 25, 1980," within a reasonable time after being informed of the deficiency. Appellant argues that the omission was minor and insufficient to warrant the cancellation of its lease. Appellant asserts that other BLM state offices have allowed offerors up to 2 years to update their corporate qualifications files. Appellant cites Christiansen Oil and Gas, Inc. v. Andrus, Civ. No. C 78-257K (D. Wyo. Aug. 20, 1979), and Kerr-McGee Corp., 46 IBLA 156 (1980), contending that the case at bar presents no substantial cause justifying administrative cancellation of the lease.

The circumstances of the case before us are unlike those in the cases cited by appellant. In Christiansen, supra, the corporation had listed its name incorrectly on the lease offer. The court found that this was a trivial and inconsequential discrepancy which did not warrant cancellation of the lease. In Kerr McGee a lease was inadvertently issued for land, part of which was the subject of a forest exchange application. The Board found that cancellation of that part of the lease covered by the forest exchange application was not justified

where the application did not include the mineral estate and had been withdrawn by the proponent. The Board noted in Kerr McGee that no obstacle or objection to the lease existed, that cancellation would be disadvantageous to both the lessee and the United States, and that interested parties had had an equal opportunity to obtain a lease for the lands in question. In the instant case, however, the party perfecting its offer before appellant cured the defect in its own offer would be unfairly deprived of the opportunity to obtain the lease, if the lease were not canceled.

[1] A noncompetitive oil and gas lease for Federal lands may be issued only to the first qualified applicant. 30 U.S.C. § 226(c) (1976), and cancellation is mandatory where an oil and gas lease issued in violation of the statute or regulation of the Department. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). When the subject lease offer was filed, it did not comport with the regulations and was, therefore, defective. The Department has consistently held that a noncompetitive oil and gas lease offer which is defective earns no priority on the date of its filing, but where the defect is "curable" priority is established as of the date the defect is remedied. Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974), aff'd, Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). In over-the-counter filings, priority of consideration is earned from the time the curative data is filed. Bear Creek Corp., 5 IBLA 202 (1972).

Appellant was on notice and should have been aware of the new regulatory requirements published in the Federal Register of May 23, 1980. BLM's instruction to appellant to conform its qualifications to the new regulatory requirements did not maintain the priority of consideration determined by the drawing as no rights or priorities may be established without authority of law. See Barbara Niernberger, 53 IBLA 112, 117 (1981). The Secretary's duly promulgated regulations are binding upon the Department and must be complied with. Exxon Co., U.S.A., 45 IBLA 313 (1980). Appellant's allegations as to questionable practices at other BLM state offices are of no avail.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge